

## REMARKS

This Amendment is submitted in response to the non-final Office Action mailed on April 11, 2007. Claims 28-60 are pending. Claims 32, 41-43, 45, and 48 have been amended. Claims 49-60 are new. Applicants appreciate the Examiner's indication in the Office Action that claims 28-40 and 44 are allowed. In view of the following remarks, as well as the preceding amendments, Applicants respectfully submit that this application is in complete condition for allowance and request that the Examiner reconsider the application in this regard.

### Rejections under 35 USC § 112, 2<sup>nd</sup> Paragraph

Claims 41-43 and 45-48 stand rejected under 35 USC § 112, 2<sup>nd</sup> Paragraph as being indefinite. Applicants have amended claims 41-43 and 45 in a manner believed to be sufficient to overcome the rejection.

### Rejection under 35 U.S.C. § 102

Claims 45-47 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,325,622 to Kelly et al. (hereinafter *Kelly*). Claim 45 is the sole independent claim subject to this rejection. The Examiner contends that *Kelly* shows or teaches all the features of the rejected claims. Applicants respectfully traverse the Examiner's contention.

Independent claim 45, as amended, recites "a metallic ligating member coupled with said bracket body for sliding movement relative to said bracket body between an open position in which the archwire is insertable into said archwire slot and a closed position in which the archwire is retained in said archwire slot." In contrast, *Kelly* discloses a latch (24) that includes portions (44, 48) attached with a fixed relationship relative to the bracket body (28) and another portion (46) between portions (44, 46). Portion (46) contacts the bracket body (28) to provide a closed position in which the archwire (56) is captured by the latch (24) within the archwire slot (30). To provide an open position for inserting the archwire (56) into the archwire slot (30), portion (46) can be flexed outwardly from the bracket body (28) and relative to the fixed portions (44, 48) against a resilient bias directed to restore portion (46) to the closed position, as best shown in Figs. 1-4 of

*Kelly*. Hence, *Kelly* fails to disclose that the portion (46) of latch (24) is coupled with the bracket body (28) for sliding movement relative to the bracket body (28).

In order for a reference to anticipate a claimed invention, the reference must disclose each and every element in the precise arrangement set forth in the claim. If the reference fails to disclose even one of the claimed features, the reference does not and cannot anticipate the claimed invention. In this instance, based at least upon the deficiency of the disclosure of *Kelly* identified in the preceding remarks, Applicants respectfully request that the Examiner withdraw the rejection of independent claim 45.

#### **Rejection under 35 USC § 103**

Claim 48 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kelly* further in view of U.S. Patent No. 5,254,002 to Reher et al. (hereinafter *Reher*). Applicants submit that claim 48 is patentable for at least the same reasons as independent claim 45 from which it indirectly depends. In this regard, *Reher* fails to cure the deficiency of *Kelly* identified hereinabove. To establish a *prima facie* case of obviousness, the prior art references being combined must teach or suggest all the claim limitations. *See* MPEP § 2143. Furthermore, dependent claim 48 recites a unique combination of elements not disclosed or suggested by *Reher* in combination with *Kelly*.

#### **New Claims**

Claims 49-60, which represent new claims that depend from independent claim 45, are analogous to dependent claims 32, 33, and 35-44. Dependent claims 49-60 are patentable for at least the same reasons as independent claim 45. Furthermore, each of these dependent claims recites a unique combination of elements and limitations not disclosed or suggested by the art of record.

### Conclusion

Applicants have made a bona fide effort to respond to each and every requirement set forth in the Office Action. In view of the foregoing remarks, this application is submitted to be in complete condition for allowance and, accordingly, a timely notice of allowance to this effect is earnestly solicited. If there is any additional matter that may be resolved by telephone or fax, the Examiner is invited to contact the undersigned to expedite issuance of this application.

Applicants do not believe fees are due in connection with filing this communication. However, if such petition is due or any fees are necessary, the Commissioner may consider this to be a request for such and charge any necessary fees to Deposit Account No. 23-3000.

Respectfully submitted,  
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